

The complaint

Mr M complains about the advice given by Zurich Assurance Ltd to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension and then take tax-free cash and annuity. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

I set out the background to this complaint and my provisional findings in a provisional decision, this is included below for ease of reference and forms part of this decision.

'Before Mr M sought advice, he'd recently been divorced and attempted to take his NHS pension benefits early on the basis of his poor health, but this was declined. He was looking for a sum of money to allow him to move house and settle the costs of the divorce.

Although Mr M doesn't remember whether he approached Zurich or he was responding to them, he was looking to potentially access his pension to fund moving to a more suitable home and this led to taking financial advice from Zurich.

On 23 May 2001, Mr M called to establish when the transfer would be finalised. During this call he said that he was buying a house and needed the maximum tax-free cash from his pension within two months and to subsidise his income as he was now on a reduced salary.

A Fact Find was produced which showed Mr M was aged 50 at the time of the advice, he had no dependent children, wasn't working, wasn't in good health as he was suffering long term stress.

It also said he wanted no risk with maximum possible guarantees. He had no other pensions except one for £11,000 with Abbey Life. He had a £50,000 mortgage on a property worth £120,000 and £30,000 of additional unspecified debt.

On 7 July 2001, Zurich, then Allied Dunbar, wrote to him setting out the results of their assessment and recommending the transfer. This also included other issues he should consider and risk warnings.

This letter set out Mr M's reasons for transferring:

- His pension benefits were not available through his NHS pension scheme until age 60.
- He wanted to break all ties with his employer and move funds to a plan under his control.
- He wanted to supplement his current income by taking his pension benefits immediately.
- He was moving house in the next few months and wanted a lump sum to finance the move.
- He was divorced so didn't require the spouse's pension, but he did have his son and daughter as dependents.

On 13 July 2001, Mr M signed to say that he wanted to transfer his NHS pension to an Allied Dunbar IRP and he was aware he was giving up his guaranteed pension benefits under the NHS pension scheme.

On 26 October 2001, £206,882.84 was transferred from Mr M's NHS defined benefit pension to an IRP with Zurich. This was made up of a combination of 'Protected Rights' and 'Non Protected Rights'.

On 15 November 2001, a further suitability letter was sent out by Zurich saying that they recommended an Allied Dunbar annuity. Mr M purchased an annuity with £195,800.70 (the non-protected rights element of the fund) and took tax-free cash of £48,950.17.

Our investigator looked into the complaint and upheld it on the basis the advice wasn't suitable and Mr M should've been advised to stay in his current property rather than buying a new home which was why he required the tax-free cash.

Mr M's representatives agreed with the outcome reached but Zurich did not and both parties gave further evidence which I've considered and will comment on in my findings section below.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so I am minded to reach a different conclusion to that of our investigator, I'll explain why below.

It should be noted that the complaint has been made 24 years after the advice, so unsurprisingly the available testimony and the overall quality and quantity of the evidence is rather poorer than would usually be the case. Mr M is now 74 and has been in receipt of his annuity for 24 years and the earliest retirement age of the scheme, when he could've had his benefits is now some 15 years ago. Whilst Zurich has consented to us looking at this case, I am somewhat confused as to why Mr M has complained so long after the advice. If the loss of his OPS pension in retirement had left him unhappy, I would've expected him to have complained about this much earlier than he has done.

The rules in place at the time

The advice was provided by Zurich in 2001. At this time Zurich was regulated by the Personal Investment Authority ('PIA'). Zurich was a previous member of the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO). When the PIA took responsibility for LAUTRO businesses in 1994, they adopted the LAUTRO rules. And these adopted rules applied at the time of the advice in this case. I've set out the relevant rules below:

The LAUTRO rules included a Code of Conduct at Schedule 2 to the rules. This required advisers to exercise 'due skill, care and diligence' and 'deal fairly with investors'. Paragraph 6 of the Code of Conduct required advisers to give 'best advice', which included that they should not:

- Make inaccurate or unfair criticisms of other investments, or of any occupational or state pension; or
- Advise the investor to convert, cancel or allow to lapse any investment contract, occupational or state pension, unless they genuinely believed it to be in the consumer's best interest and clearly disclosed all relevant consequences and disadvantages.

Paragraph 8 required an adviser to consider '*the investor's financial position generally and to all other relevant circumstances*' - which included their rights under occupational and state pensions. It required them to recommend the contract from within the provider or marketing group's range which was most suited to the investor.

I've considered the advice given to Mr M with this in mind.

My findings

I agree with the investigator that transferring was not in Mr M's best interests if his sole reason was to improve his benefits in retirement. The transfer wasn't financially viable with the critical yield to age 60 at 9.8% and Zurich said as much at the time. It explained Mr M would be worse off transferring if he

intended to retire at age 60. It also said it couldn't give a comparison for taking benefits immediately as this wasn't an option within the scheme. But in any event, Mr M was to take out an annuity on transfer and it wouldn't increase. So that set in stone the differences between taking his benefits early compared to remaining in the scheme. The recommendation letter set out that by taking his benefits early, Mr M would be reducing the amount of pension payable and therefore his long term income level. The attachments with the recommendation set out an estimate of the annuity and lump sum he'd receive on transfer compared to what he could get from the scheme on retirement.

For this reason alone a transfer out of the DB scheme wasn't in Mr M's best interests. Of course financial viability isn't the only consideration when giving transfer advice; there might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Mr M says he wasn't given much if anything in the way of documentation at the time but Zurich has retained the letter of recommendation dated 2 July 2001 and it is addressed to Mr M's home address. Within this an illustration of benefits was given alongside the benefits available in the scheme. So I think Mr M ought to have known what he was giving up from age 60 and what he would get in return. I also don't think it's plausible that Mr M would've taken this decision without some knowledge of what was available from the scheme – and he'd previously contacted the scheme to try and take his benefits via ill-health. I don't think this process could've occurred without some knowledge of what he could get from the scheme being present. I think on the balance of probabilities Mr M took the decision to transfer knowing what he was getting compared to the income he was giving up.

At the time of advice Mr M was going through a very difficult time, he'd left his job due to stress. He'd recently been divorced and had outstanding debts of £30,000. His new job was at a reduced level of income, he'd tried to take his benefits from the scheme due to ill-health but had been refused. He was also living in a home he considered temporary, had custody of his son and shared custody of his daughter and wanted to move into a more suitable house for him and his children. He's told us his objective was always to raise capital but at the time it was recorded in the fact find that he required an income of £1,200 but his existing income left him with a shortfall of £700 – it was also recorded in a call prior to the advice that Mr M required income. After the advice was given the evidence shows Mr M wanted his annuity set up as quick as possible. It does appear that it was very important for Mr M to improve his immediate situation and that could only be done by acquiring a lump sum and additional income.

Mr M has told us about what he can remember about the time:

"I was in the process of finalising a divorce which I found incredibly stressful. I wanted to buy a particular house as part of getting my life back together, hence the need to raise some additional capital. I did have a reduced income but was covering the shortfall by taking casual work for family and friends, this was not ideal but was alright.

At no time did I have an advisory discussion with the adviser regarding other options for raising capital to purchase the house. As previously stated, had I been cautioned properly about the long term financial implications of this action I could have potentially raised the capital from my parents, but did not want to do so if at all possible...

I must stress again that this all happened at a time in my life that was very difficult, I found my divorce very stressful together with moving house and ensuring that the best was being done for my children at this time... This would give me the opportunity to reset my life after a difficult couple of years. Ultimately I left my employment due to my mental state and having a breakdown which is why I was wanted to move to reset my life. Where I moved to I was able to achieve a good level of income from casual work. I had ongoing support from my GP at this time."

With regards to what Mr M could remember about what he used the tax-free cash for:

'At the time of my divorce my then wife and I bought smaller houses that were a couple of minutes walk apart so that the children could walk between parents as they wanted. My son lived mostly with me and my daughter mostly with her mother. The house I bought I did not like but it served a purpose at the time. As my children got older and my

son went to university I saw this as an opportunity to move to a house I liked in a village that I liked. This would give me the opportunity to reset my life after a difficult couple of years.

I believe that I sold at £115,000 and wanted to buy at £132,500. Any remaining capital raised went to my ex-wife as a final settlement to complete the purchase of her house and to settle joint debts I believe that my mortgage at the time of moving was £60,000, which I did not want to increase. In general terms my outgoings would have been similar in either property.'

Even prior to meeting with Zurich, the evidence shows Mr M wanted to take his benefits early at age 50. We know his key objectives were to get access to a lump sum to finalise the divorce settlement and move house with the chance to reset and move on with his life. I don't think he could have achieved this by staying in the NHS scheme. This is because he couldn't take a lump sum from the scheme until he was at least age 60, which was approximately 10 years away. And he didn't have savings or another pension he could've used to meet this need. However, the tax-free cash available to Mr M on transfer to a personal pension was just under £50,000. So, I think transferring out of the DB scheme met this objective, whereas the DB scheme could not.

Mr M says there was no discussion about how else he could meet this need, though even if there was it would be difficult to comprehend that Mr M would remember this discussion so long after the event. But from the recorded evidence and what Mr M has told us, the only possible way would've been to borrow, or more likely take (for want of a better word), the money from his parents. As I cannot see how Mr M would've been able to repay that sort of money. I'm sure his parents would've wanted to help but as Mr M has said he was extremely reluctant to ask – and he wasn't sure in any event they would've been able to help. Mr M required a large lump sum and I don't think on the balance of probabilities I can conclude he could've got this from his parents, given what he has told us. Taking his benefits early, allowed him to gain access to this lump sum without having to ask his parents for money they may not have been able to give him.

There was however a big trade off in taking this course of action. In doing so, Mr M was giving up a pension of approximately £20,000 a year from age 60 going up to £23,000 a year from age 65. Instead he was getting an annuity of just under £8,400 a year – although he'd receive approximately ten years' worth of extra income in comparison to the scheme. Receiving a lump sum ten years earlier allowed him to reset his life, buy a new house somewhere he liked, finalise the divorce settlement and to settle debts. To attain that money from the scheme he'd have to wait nearly ten years and this could trap him in the same set of circumstances he was desperate to get out of. His income had been reduced so realistically his finances were otherwise likely to get worse without extra income. I appreciate Mr M said he picked up casual work from friends and family but it's unlikely this could be relied upon long term and it appears this was after the transfer had occurred. The evidence from the time strongly suggests Mr M wanted and needed additional income.

Primarily I'd expect a pension to be used to make sure an individual is comfortable in retirement if possible. But sometimes there are circumstances where retaining the guarantee of a comfortable income in retirement can be overshadowed by a need for a lump sum and/or increased income earlier in life to solve issues that cannot otherwise be solved. I think for Mr M this was one of those situations. He could either use his pension for a comfortable retirement in ten years' time or to better his circumstances when he was in a bad place both financially and mentally. From what Mr M has told us now, I don't think at the time he'd have wanted to stay in the situation he was in, regardless of his level of understanding of the benefits he was giving up.

Mr M has told us the advice process was rushed and I don't doubt this is his honest testimony. Looking at the evidence we do have, it does look like the advice process could've been more thorough – but that is without access to evidence such as the adviser's testimony, phone recordings and testimony from closer to the time from Mr M. I think the underlying reasons to transfer or not transfer were quite simple as the two options given were so stark in their differences. And as I've said I don't think realistically Mr M could've met his objectives through means other than his pension. I think Mr M was likely aware of this conundrum given the information he was given at the time. The standards for advice in 2001 are not what they are now and as I've said due to the time that has passed it is difficult to say exactly what Mr M was told or what happened. But ultimately I don't think

it's necessary to discuss the merits of the advice process in any detail because I think the evidence suggests that on the balance of probabilities Mr M would've wished to transfer from a fully informed position regardless.

I am minded to not uphold this complaint as I am of the view that the advice met the key objective for Mr M and this likely couldn't have been met through any other means. And in the event Mr M was in a fully informed position, I think he would've still wanted to transfer.'

Zurich accepted my provisional decision. In response Mr M made a number of points, I've summarised the key parts of the response below:

- Mr M maintains that he did not have any meaningful discussion about the alternative options and their implications – i.e. to not transfer, early retirement for example – leading to not being able to move in the short term or if he could raise funds by another method. As highlighted in the provisional decision, Mr M saw this as an opportunity – not imperative or as a matter of urgency.
- He was not particularly concerned about the size of pension income until about the age of 70 as he and his second wife were running a successful business, so the pension was a secondary income. They stopped trading a bit before Lockdown and it was only then that the pension income became significant.
- He was never presented with the stark figures of what he was giving up financially by making the transfer. Had he had a full and professional discussion with the adviser then these figures should have been presented to him.
- The objectives presented at the time of advice were mostly added in by the adviser, for example Mr M had no requirement to break all ties with his employer.
- Mr M relied on the adviser for the best course of action but the adviser didn't carry out a thorough advice process (maybe because of his own health struggles).
- Had he been in the frame of mind to fully appreciate the long-term implications of the decisions he was taking, Mr M would've had to reconsider his options for raising capital.
- He fully accepts that his short-term objectives were met but the cost of achieving this was never fully explained to him by the adviser.
- Mr M was picking up extra work from friends and family, the decision suggests that this was unlikely to be relied upon long term – however, this is of course an assumption. With Mr M's skills, education and experience, additional work, if required, may not have been as hard to find, especially if this allowed him to maintain his finances up to the early retirement age from the NHS, or at least until a time the actuarial reduction of benefits fell in line with the/an income Mr M required in retirement. As a MHO within the NHS, unreduced benefits were available from 55, 4 years after the transfer. Could Mr M have delayed his house purchase with the benefit of receiving unreduced benefits? This was not discussed.
- It was not considered whether Mr M could take early retirement from the NHS. An application was made on the basis of unreduced benefits due to ill-health. But there is no evidence of any application on the basis of the standard early retirement and the benefits Mr M could've taken at this time.
- Why did this transaction not complete as one – rather, a transfer first, then the annuity purchase – both coming with separate adviser fees? Why was the annuity first indicated

to be recommended with a 3% increase, however ultimately a level annuity was sold based on “*you chose a level annuity*” without justification as to why, and why this differs from the original ‘advice’ and report provided on the 2nd July 2001.

- We feel all of the above lead to the advice being unsuitable, no effective comparison being made and an overall order taking process being adopted to satisfy an ‘opportunity’ Mr M was looking into.
- the provisional decision suggests that if Mr M had been fully informed, the Ombudsman’s view is that Mr M would have transferred anyway. It is impossible to say whether this is true. However, this is not the basis of either the advice process or the complaint. The complaint is bringing into question whether Zurich fulfilled their responsibility to their client, acting in his best interests and clearly making sure he was informed of the implications of the recommended actions, including alternatives.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having reconsidered the case in light of the points raised above, I am not persuaded to change my decision. The reasoning set out in my provisional decision still applies but I will expand on this in relation to the points raised subsequently.

Firstly and most significantly I don’t agree that Mr M’s motivations for taking benefits was seen at the time as a nice to have or just an opportunity that Mr M was looking into. We are some 20+ years away from the event, so the evidence from the time is in my view more impactful and I think Mr M had a very strong want/objective to secure a lump sum and additional income to improve his immediate circumstances. This is in fact supported by Mr M’s testimony now that he wanted to reset his life and had concrete plans on how to do so.

The evidence from the time for example shows (and there is other supporting evidence that I discussed in the provisional decision) that Mr M after meeting with Zurich called it to say that he was buying a house and needed the maximum tax-free cash within two months. And that he was living on a reduced salary and needed income. It seems that at the time of the advice Mr M had already committed to buying a property and the evidence and his testimony since, supports that making a change in his life at this time was very important to him. And Mr M had already pursued other avenues before coming to Zurich to achieve this. I think he ought to have known the cost this came at having already tried to take benefits from the NHS scheme – it is not credible that he did this not knowing what those benefits he was trying to secure were. I think the evidence supports that Mr M was set on this course of action and he was told the benefits he was giving up but chose to proceed. I think on the balance of probabilities he would’ve done it anyway from a fully informed position and therefore this complaint hasn’t been upheld.

Mr M’s representatives say that this isn’t the basis of complaint or the advice and I agree but it is the basis of what I need to consider when deciding whether this complaint should be upheld or not.

Mr M’s representatives have raised a number of new points that could have been raised when the complaint was made rather than the generic complaint submitted at the time. And no corroborating evidence has been submitted to support these arguments.

This brings me to Mr M’s representatives new points raised about Mr M’s options within the NHS. It is suggested now that Mr M could’ve retired early from the scheme with a reduction

of benefits or with his special class status retire at 55 with no reduction. However, no evidence has been presented that this would've applied to Mr M. The evidence from the time shows that Zurich had been in contact with the NHS to ascertain Mr M's options and that he couldn't retire at that point (aged 50/51). And we know that Mr M had already contacted the NHS to attempt to take benefits early under ill-health but had been refused. The evidence also shows that Mr M wants to transfer as he has been told he couldn't take his benefits from the scheme until age 60. And it appears that Zurich's enquiries have corroborated this. The evidence is clear that Zurich has been in contact with the NHS scheme and Zurich believe Mr M wouldn't be able to take benefits until age 60. I'd also expect that if Mr M could've taken benefits at 50 or age 55, in requesting early retirement for ill-health from the scheme and it subsequently rejecting his request it would've given him information about when he could retire.

Also from my research, early retirement before age 60 wasn't available to all in the scheme. GMP and protected rights could have an impact on that option and I note this was applicable to Mr M's benefits built up in the scheme. Even if Mr M did have MHO status allowing early retirement and unreduced at age 55, (this seems unlikely given what I've said above and Mr M's contact with the NHS, furthermore his job role wouldn't usually qualify for this status) this was still over four years away and his need for a lump sum was immediate. So, in conclusion of this point, no corroborating evidence has been presented by Mr M's representatives that he could've retired earlier than 60 and the evidence from the time strongly supports that age 60 was the earliest Mr M could've retired.

With regards to the annuity options considered, this complaint was about the advice to transfer his OPS benefits and not the annuity purchased. I appreciate they are in part linked but we are not now going to go away and investigate the annuity sale as part of this complaint. I've considered these points in relation to the OPS transfer and based on the information we already have and I cannot see anything that changes my decision. There doesn't appear to be a separate charge for the separate bits of advice. The evidence shows the basis of the annuity changed due to subsequent discussions with Mr M. These likely occurred because it appears the annuity rates changed between the advice to transfer and the time by which the annuity could be purchased after the transfer completed. So having a new conversation and getting new quotes would make sense here.

Mr M and his advisers have re-iterated their points about the standard of the advice given at the time and the nature of the meetings and information provided to Mr M. I don't doubt what Mr M has told us is his honest recollections and I have taken this into account alongside the documented evidence from the time. I suspect the advice process wasn't particularly thorough in terms of his meetings with the adviser but the recommendation did set out that if Mr M wanted to retire at age 60, it wouldn't be in his best interests to transfer. But that it agreed if his need for immediate cash and income now was stronger than protecting his income in retirement, that transferring was the only way to meet this need. Given the evidence from the time and what Mr M has told us about his circumstances, I don't think this seems unreasonable.

Ultimately regardless of the finer points of the specific rules in place and the quality of the advice process, I think this case boils down to the question of whether Mr M would've transferred to achieve his objectives from a fully informed position? I think it is fair to say that Mr M prior to the advice was pretty determined to change his circumstances (NHS request and appeal for immediate benefits under ill-health, house purchase requiring additional funds to complete, income needs not being met, divorce costs still to be settled, seeking advice from Zurich about accessing his pension) and he made this choice to secure a lump-sum and tax-free cash knowing he wouldn't get the NHS pension in the future (and he ought to have known the amounts). With this in mind and looking at Mr M's testimony now, it is difficult to come to the conclusion that had he been given more detailed information/had

more in-depth discussions about the benefits he was giving up that he would've decided to tough out his current situation or that he could have found other ways of financing his plans. I think Mr M would have chosen to transfer from a fully informed position.

I note that Mr M's representatives have argued that Mr M may have been able to continue to pick up ad-hoc work to meet his income needs but looking at his testimony it appears this work was found after he had moved – and so after the transfer had already completed. The evidence from the time shows that Mr M's income was short of what he required and he chased Zurich to speed up the transfer because he needed the tax-free cash and additional income.

In conclusion, we are now 24 years from the advice that gave Mr M the opportunity to settle his divorce, meet his income needs and buy a new property to reset his life and Mr M has complained ten years after the date he could've received the benefits from the scheme (the loss of these benefits being the reason for complaint), the advice allowed Mr M to change his life for the better but it came at a cost and that cost was or ought to have been broadly understood by Mr M at the time. Mr M decided to proceed and benefitted from the funds secured at the time to improve his circumstances and his life. I am not persuaded by the arguments made now that the business acted unfairly and unreasonably in facilitating this course of action for Mr M through its recommendation to transfer.

My final decision

For the reasons explained above, I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 November 2025.

Simon Hollingshead
Ombudsman